

2006

Richard Davis v. Provo City Corporation : Brief of Appellant

Utah Supreme Court

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IN THE UTAH SUPREME COURT

RICHARD DAVIS,

Plaintiff/Appellant,

vs.

PROVO CITY CORPORATION,

Defendant/Appellee,

GREG SPERRY, RED SLAB, LLC,
and JOHN L. VALENTINE,

Defendants.

APPELLANT'S OPENING BRIEF

Case No. 20060909-SC

Oral Argument and
Published Decision Requested

RED SLAB, LLC,

Plaintiff,

vs.

RICHARD DAVIS,

Defendant (substituted as a
Defendant for Defendants
Design West, LLC, Loren
Kapelow and Stephen
Kapelow, deceased)

**APPEAL FROM INTERLOCUTORY ORDER
OF THE FOURTH DISTRICT COURT, UTAH COUNTY
THE HONORABLE JAMES R. TAYLOR**

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FILED
UTAH APPELLATE COURT
APR 10 2007

IN THE UTAH SUPREME COURT

RICHARD DAVIS,

Plaintiff/Appellant,

vs.

PROVO CITY CORPORATION,

Defendant/Appellee,

GREG SPERRY, RED SLAB, LLC,
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RED SLAB, LLC,

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STATEMENT OF JURISDICTION

The District Court entered its interlocutory Order Granting Defendant Provo's Motion to Dismiss and Related Rulings ("Order") on September 20, 2006. [Record on Appeal ("R.") 1877-79, Addendum ("Add.") A hereto].¹ Pursuant to *Utah R. App. P.* 5(a), plaintiff/appellant Richard Davis ("Davis") timely filed his Petition for Permission to Appeal from Interlocutory Order in this Court on October 6, 2006. On December 6, 2006, this Court issued its Order granting Davis' Petition. This Court has jurisdiction over this appeal from the interlocutory Order pursuant to *Utah Code Ann* § 78-2-2(j).

STATEMENT OF ISSUE, PRESERVATION OF ISSUE AND STANDARD OF REVIEW

The issue presented is whether the District Court erred in ruling that the statute of limitations applicable to a claim contesting a municipal annexation is the general four year catch-all statute in *Utah Code Ann.* § 78-12-25(3), rather than the one year statute in former § 10-2-403 (1977) and present § 10-2-422, specifically directed to municipal annexations. This issue was preserved in the District Court (R. 1780-84). The issue is one of statutory construction subject to a *de novo* standard of appellate review. *See, Rushton v. Salt Lake County*, 1999 UT 36, ¶ 17, 977 P.2d 1201.

¹ Unless otherwise indicated, references to the record on appeal are to the record in Civil No. 000403760, which was consolidated with Civil No. 050403416.

DETERMINATIVE STATUTES

Former *Utah Code Ann.* § 10-2-403 (*Laws of Utah* 1977, Chapter 48, Section 2)

provided:

Whenever the inhabitants of any territory annexed to any municipality pay property tax levied by the municipality for one or more years following the annexation and no inhabitants of the territory protests [sic] the annexation during the year following the annexation, the territory shall be conclusively presumed to be properly annexed to the annexing municipality.

The current equivalent at *Utah Code Ann.* § 10-2-422 similarly provides:

An area annexed to a municipality under this part shall be conclusively presumed to have been validly annexed if:

- (1) the municipality has levied and the taxpayers within the area have paid property taxes for more than one year after annexation; and
- (2) no resident of the area has contested the annexation in a court of proper jurisdiction during the year following annexation.

Utah Code Ann. § 78-12-25(3) provides: "An action may be brought within four years: . . . (3) for relief not otherwise provided for by law."

Utah Code Ann. § 78-12-1 provides: "Civil actions may be commenced only within the periods prescribed in this Chapter, after the cause of action has accrued, except in specific cases where a different limitation is prescribed by statute."

STATEMENT OF THE CASE

Nature of the Case

This action involves disputes between Davis, defendant/appellee, Provo City Corporation ("Provo City") and various other parties in the District Court (who are not

parties to this appeal) concerning real property Davis owns in Rock Canyon, Utah County, Utah (the "Property") (R. 417-78). The disputes relevant to this appeal pertain to Provo City's purported annexation of the Property.

Davis' Seventh Cause of Action in his Amended and Supplemental Complaint in this action ("Amended Complaint") contends that Provo City's purported annexation was illegal and is void and of no effect with respect to the Property, for two reasons. First, Davis contends that the annexation petitions were not signed by the requisite number of real property owners, under the provisions of the former *Utah Code Ann.* § 10-2-401 in effect at the time (*Laws of Utah* 1977, Chapter 48, Section 2). Second, Davis contends that the purported annexation left unincorporated islands in Provo City, in violation of former § 10-2-402 (*Laws of Utah* 1977, Chapter 48, Section 2). (R. 465-66)

Course of Proceedings and Disposition Below²

Davis filed this action in November, 2000 (R. 1-8). After changing counsel (R. 202-03), Davis filed his Amended Complaint in November 2005 (R. 417-78).

Among other things, Davis' Amended Complaint added Provo City, Red Slab, LLC ("Red Slab") and John L. Valentine ("Valentine"), a member and manager of Red Slab, as defendants (R. 417-78).³ In December 2005, Provo City moved to dismiss

² Davis will address only those proceedings in the District Court that may relate to this appeal or provide necessary background.

³ In April, 2006 this case (Civil No. 000403760) was consolidated with Civil No. 050403416, in which Red Slab is the plaintiff and Davis is the defendant (R. 1751, 1764-65).

Davis' Seventh Cause of Action against Provo City (discussed above) (R. 516-532).

Provo City argued, among other things, that the Seventh Cause of Action is barred by the one year statute of limitations in effect at the time of the purported annexation, former *Utah Code Ann.* § 10-2-403 (*Laws of Utah* 1977, Chapter 48, Section 2) (quoted above) (R. 527-29).

In his memorandum in opposition to the motion to dismiss, Davis argued, among other things, that his Seventh Cause of Action was not time barred under former § 10-2-403 (1977) (or present § 10-2-422, also quoted above), because Provo City had never levied property taxes against the Property after he acquired it in 1998 (R. 716-17, 721, 741-51).⁴ As Ex. A to its reply memorandum in support of its motion to dismiss, Provo City filed the Affidavit of Paul Bredthauer, conceding Provo City had never assessed city property taxes against the Property after it was purportedly annexed in 1978 (but intended to do so in 2006) (R. 1060-62, Add. B hereto).

During oral argument on Provo City's motion to dismiss, Provo City argued for the first time that if Davis' Seventh Cause of Action was not time barred by former § 10-2-403, it was barred by either the three year statute of limitations in present *Utah Code Ann.* § 78-12-26(1), applicable to actions for "injury to real property," or the

⁴ Davis also sought discovery under *Utah R. Civ. P.* 56(f) (R. 752-57). However, the only discovery Davis sought regarding the issue on this appeal was whether Provo City assessed property taxes against the owners of the annexed property, and whether any such property taxes were paid. Given Provo City's admission that it has never assessed Davis' Property (discussed below), this discovery probably became unnecessary.

four year catch-all statute of limitations in present § 78-12-25(3), applicable to actions "for relief not otherwise provided for by law" (R. 1783-84). Because these issues had not been briefed by either Davis or Provo City, the Court directed both parties to file supplemental memoranda on these issues (R. 1751, 1783-84), which both parties did⁵ (R. 1780-84, 1788-97).

On June 28, 2006, the Court entered its Memorandum Decision (R. 1838-42, Add. C hereto), ruling that Davis' Seventh Cause of Action was barred by the four year catch-all statute of limitations in § 78-12-25(3). The Memorandum Decision also directed ". . . Provo City to prepare an order for the Court's signature consistent with this decision" (Memorandum Decision, Add. C hereto, R. 1839).⁶ Provo City prepared the Order, to which Davis objected and presented his own proposed order⁷ (R. 1845-62). The Court denied Davis' objections and entered the Order (as proposed by Provo

⁵ In its supplemental memorandum, Provo City did not pursue its argument that present § 78-12-26(1) might apply (R. 1788-97).

⁶ In the Memorandum Decision, the District Court indicated that Provo City had not levied property taxes on the Property after Davis acquired it (in 1998) (Memorandum Decision, Add. C hereto, R. 1840-42). However, as indicated above, Provo City conceded it has never assessed property taxes on the Property, at any time after the 1978 annexation, through 2005 (R. 1060-62, Add. B hereto).

⁷ Among other things, Davis requested the District Court to certify its Order as final for purposes of immediate appeal under *Utah R. Civ. P.* 54(b) (R. 1845-62), which the District Court declined to do. (R. 1877-79, Add. A hereto.)

City) on September 20, 2006, dismissing Davis' Seventh Cause of Action based upon the four year statute of limitations.⁸ (R. 1877-79, Add. A hereto.)

STATEMENT OF FACTS

The following facts are material to a consideration of the issue presented and the Order that is the subject of the appeal:

Davis acquired the Property in April, 1998. He owns at least a 50% undivided interest in the Property, and has record title to a 75% undivided interest. Red Slab has record title to an undivided 25% interest in the Property, and claims it has the right to acquire another 25% undivided interest.⁹ Davis disputes all of Red Slab's claims of ownership. Red Slab also purported to convey a conservation easement to Provo City, and Davis also disputes the validity of that conservation easement¹⁰ (R. 813-19, 788-801).

In January, 1978, Provo City purported to annex a portion of the Property (R. 472). However, as discussed above, Provo City admits that it never assessed city

⁸ The District Court did not rule upon the other issues raised by Provo City's motion to dismiss, and denied Davis' Rule 56(f) request for discovery. (R. 1877-79, Add. A hereto.)

⁹ Defendant Greg Sperry had a prior claim of ownership that is not relevant to this appeal.

¹⁰ The disputes between Davis, on the one side, and Provo City, Red Slab and Valentine, on the other side, mainly involve Davis' desire to quarry the large volume of valuable quartzite rock on his Property in Rock Canyon, and the desire of Provo City, Red Slab and Valentine to prevent Davis from doing so.

property taxes against the Property, after the purported 1978 annexation (R. 1060-62, Add. B hereto).

SUMMARY OF ARGUMENT

The District Court erred because § 78-12-25(3) does not apply. Under § 78-12-1, the statutes of limitations in Chapter 12 of Title 78 do not apply ". . . where a different limitation is prescribed by statute." Also, this Court has held that § 78-12-25(3) applies only to claims that are not subject to a more specific statute of limitations. Here, former § 10-2-403 (1977) and current § 10-2-422 are different, more specific statutes of limitation that expressly apply to Davis' claim contesting Provo City's purported annexation of his Property. This analysis is also supported by persuasive case law from another jurisdiction. Thus, these are the statutes that apply, not § 78-12-25(3).

Moreover, it is undisputed that Provo City never levied property taxes against the Property. Thus, as a matter of law, Davis' claim is not time barred by either former § 10-2-403 (1977), or present § 10-2-422.

ARGUMENT

**THE APPLICABLE STATUTES OF LIMITATION ARE
FORMER § 10-2-403 (1977) AND CURRENT § 10-2-422,
WHICH SPECIFICALLY GOVERN CHALLENGES TO
MUNICIPAL ANNEXATIONS, NOT THE GENERAL
CATCH-ALL STATUTE IN § 78-12-25(3)**

In *Quick Safe-T Hitch v. RSB Systems L.C.*, 2000 UT 84, ¶ 15, 12 P.3d 577, this Court held that § 78-12-25(3) applies only to ". . . claims for which the legislature

has not enacted a more specific statute restricting the time in which a particular claim may be brought." The Court relied in part on § 78-12-1 and reasoned as follows:

Section 78-12-1 of the Utah Code mandates that civil actions "may be commenced only within the periods prescribed in this chapter . . . except in specific cases where a different limitation is prescribed by statute." *Utah Code Ann.* § 78-12-1 (1996). Moreover, section 78-12-25(3) provides, "An action may be brought within four years: . . . (3) for relief not otherwise provided for by law." *Id.* § 78-12-25(3). The plain language of these two sections clearly requires that section 78-12-25(3)'s four-year "catch-all" statute of limitations be applied to claims for which the legislature has not enacted a more specific statute restricting the time in which a particular claim may be brought.

2000 UT 84, ¶ 15 (emphasis added)

Here, the legislature enacted former § 10-2-403 (1977) and current § 10-2-422 (both quoted above), which are different and more specific statutes restricting the time in which a claim protesting an annexation may be brought. Thus, those statutes apply, not § 78-12-25(3).¹¹ *See also, State of South Carolina v. City of Columbia*, 528 S.E.2d

¹¹ In performing the research for Davis' supplemental memorandum in the District Court, Davis' counsel came across *Mesa Development Co., Inc. v. Sandy City Corp.*, 948 P.2d 366 (Utah App. 1997), which indicates that under former *Utah Code Ann.* § 10-2-423 (1996), a successor statute to former *Utah Code Ann.* § 10-2-403 (1977), only a "resident" of the annexed property has standing to protest an annexation. *Mesa* does not apply here for several reasons. First, it is a decision of the Utah Court of Appeals, not this Court, and attempts to distinguish several of this Court's cases that recognize a property owner's standing to contest an annexation. *See*, 948 P.2d at 370, n. 2. Second, *Mesa* held that it is the statute in effect at the time of the annexation that applies. The statute at issue there used the term "resident," while the statute in effect at the time of the annexation here [former § 10-2-403 (1977)] uses the term "inhabitant." *Mesa* stated that a "resident" is "more than a mere inhabitant" (948 P.2d at 369), without further defining what an "inhabitant" is. Third, if there were no "inhabitants" of the annexed property here (however that term is defined), at the time of annexation,

408, 411-412, 414-415 (S.C. 2000), holding that the specific 90 day statute of limitations governing annexation protests applied to an action contesting an annexation, rather than the general, ten year catch-all statute of limitations; *Carter v. University of Utah Medical Center*, 2006 UT 78, ¶ 9, 150 P.3d 467, in which this Court held that a more specific venue provision controlled over the general, catch-all venue statute, in part because, " . . . when we are confronted with two statutory provisions that conflict, 'the more specific in application governs over the more general provision'" (citation omitted).

Notwithstanding the foregoing, the District Court ruled that § 78-12-25(3) applied, because current § 10-2-422 [and, by implication, former § 10-2-403 (1977)] are not statutes of limitation, but something different:

The general goals of statutes of limitations are "to prevent unfair dilatory litigation against a defendant and to require that claims be litigated while proper investigation and preservation of evidence can occur." . . . *U.C.A.* § 10-2-422 accomplishes neither of these, instead it is a conclusive limitation that can defeat a challenge to an annexation, but it does not prevent a challenge, which is the function of a statute of limitations. Adopting Davis' interpretation that *U.C.A.* § 10-2-422 is the proper statute of limitations in this matter, would allow annexations to be challenged in perpetuity as long as property taxes were not levied against a piece of property by Provo City. This Court finds that this matter falls within the catchall four-year limitation in *U.C.A.* § 78-12-25(3), barring Davis' challenge to the 1978 annexation.

this would mean that no owners of the properties purportedly annexed had standing to contest the annexation, which makes no sense.

[June 28, 2006 Memorandum Decision, Add. C hereto, R. 1840 (citation omitted)]

Davis disagrees.

Former § 10-2-403 (1977) and current § 10-2-422 impose a one year limitation on actions to contest a municipal annexation (so long as property taxes are levied and paid on the annexed property). Thus, they 'prevent unfair dilatory litigation' and 'require that claims be litigated while proper investigation and preservation of evidence can occur',¹² although they do put the burden on the annexing municipality to assess property taxes on the annexed property, in order to take advantage of the one year limitation.

The District Court's concern that an annexation could be "challenged in perpetuity so long as property taxes were not levied" is similarly misplaced. The legislature decided upon a relatively short statute of limitations (one year) within which to challenge an annexation, but also decided to require the municipality to assess property taxes against the annexed property, in order to trigger the application of that statute. While the District Court apparently disagreed with the legislature's approach, it is up to the legislature, not the courts, to change it.

Accordingly, former § 10-2-403 (1977) and current § 10-2-422 are the applicable statutes of limitations. Moreover, it is undisputed that prior to Davis' filing of his Seventh Cause of Action contesting Provo City's purported annexation of his

¹² With all due respect, it is not clear to Davis what the District Court meant when it stated that current § 10-2-422 "can defeat a challenge to an annexation, but it does not prevent a challenge."

Property, Provo City never levied property taxes against Davis' Property (R. 1060-62, Add. B hereto). Thus, that cause of action is not time barred by those statutes.¹³

CONCLUSION

Based upon the foregoing, this Court should reverse the District Court's Order, rule that the applicable statutes of limitation are former § 10-2-403 (1977) and current § 10-2-422, not § 78-12-25(3), and further rule that Davis' Seventh Cause of Action is not time barred by the applicable statutes of limitation.

DATED this 10th day of April, 2007.

PRINCE, YEATES & GELDZAHLER

By: James A. Boevers
Michael N. Zundel
James A. Boevers
Attorneys for Appellant Richard Davis

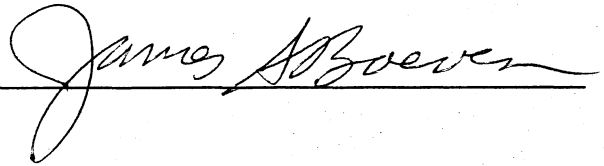
¹³ On the other hand, other owners of property within the annexed area are time barred, if they have been assessed and paid property taxes on that property.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of April, 2007, I caused to be mailed,
first-class mail, postage prepaid, two true and correct copies of the foregoing

APPELLANT'S OPENING BRIEF to the following:

Robert D. West
David C. Dixon
Camille S. Williams
James L. Wilde
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351 W. Center Street
Provo, Utah 84603

A handwritten signature in cursive script, reading "James L. Wilde", is written over a horizontal line.

G:\Jab\Davis, Richard\Sperry\Supreme Court\Appellant's Opening Brief.wpd

ADDENDUM "A"

FILED
Fourth Judicial District Court
of Utah County, State of Utah
9-20-06 Deputy

**IN THE FOURTH JUDICIAL DISTRICT COURT,
UTAH COUNTY, STATE OF UTAH**

RICHARD DAVIS

Plaintiff.

vs.

**GREG SPERRY, STEPHEN KAPELOW,
LOREN KAPELOW, DESIGN WEST,
LLC, RED SLAB, LLC, JOHN L.
VALENTINE, and PROVO CITY
CORPORATION,**

Defendants

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**ORDER GRANTING
DEFENDANT PROVO'S
MOTION TO DISMISS
AND RELATED RULINGS**

Case No. 00403760

Division VII: Judge James R. Taylor

Defendant, Provo City Corporation ("Provo"), filed a motion to dismiss the Seventh Cause of Action in Plaintiff Richard Davis' ("Plaintiff"), Amended and Supplemental Complaint. In opposing Provo's motion to dismiss, plaintiff also filed a Rule 56(f) motion and various motions to strike affidavits filed by Provo. Plaintiff and Provo filed affidavits, pre- and post- hearing memoranda and argued their respective positions before the Court at oral arguments held on April 13, 2006. The Court read all memoranda, heard the arguments, and entered a memorandum decision dated June 28, 2006. Deeming itself apprised of the issues before it, the Court enters this Order, the relevant terms of which are:

1. Provo's motion to dismiss the Seventh Cause of Action in Plaintiff's Amended and Supplemental Complaint is granted. That Seventh Cause of Action

against Provo is dismissed with prejudice and on the merits as such claim is barred by the four-year statute of limitations found in U.C.A., § 78-12-25 (3). U.C.A. § 78-12-25(3) disposes of the issues now before the Court, notwithstanding the arguments plaintiff asserts as to U.C.A. § 10-2-422 and/or its predecessor § 10-2-403 (1977) .

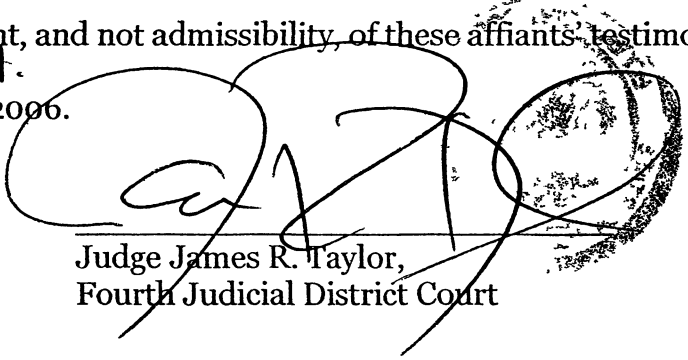
2. The Court rejects Plaintiff's argument that either present § 10-2-422 or prior § 10-2-403 (1977) gives him a right in perpetuity to contest an annexation by Provo which occurred several decades before Plaintiff acquired interests in his property.

3. As Plaintiff's Seventh Cause of Action against Provo is barred by the statute of limitations in U.C.A. § 78-12-25(3), the Court neither addresses nor dismisses Provo's alternative arguments of Plaintiff's laches, his failure to file a notice of claim or his failure to file an undertaking as provided by the Utah Governmental Immunity Act.

4. Plaintiff's URCP Rule 56(f) motion is denied because Plaintiff by such motion seeks only to discover matters applicable to U.C.A. § 10-2-422, which does not control the facts of or issues in this case, and which request is mooted by this Order.

5. Plaintiff's motions to strike the affidavits of LaNice Groesbeck, Randall Covington, Karen Jordan, Camille S. Williams and Rick Romney are all denied as Plaintiff's objections go to the weight, and not admissibility, of these affiants' testimony.

Dated this 20 day of ^{Sept.} July, 2006.



Judge James R. Taylor,
Fourth Judicial District Court

MAILING CERTIFICATE

On this ____ day of July, 2006, I mailed a copy of the foregoing Order Granting Defendant Provo's Motion to Dismiss and Other Rulings, by first class mail, postage prepaid to:

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DATED this ____ day of July, 2006.

District Court Clerk

ADDENDUM "B"

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4TH JUDICIAL DISTRICT COURT
STATE OF UTAH
UTAH COUNTY
2006 FEB 13 A 11:31

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

RICHARD DAVIS Plaintiff, vs. GREG SPERRY, , STEPHEN KAPELOW, LOREN KAPELOW, DESIGN WEST, LLC, RED SLAB, LLC, JOHN L. VALENTINE, AND PROVO CITY CORPORATION Defendants.	AFFIDAVIT OF PAUL BREDTHAUER Civil No. 000403760 Judge JAMES R. TAYLOR
--	---

STATE OF UTAH)
 ss.
COUNTY OF)

PAUL BREDTHAUER, being first duly sworn, deposes on his oath and states:

1. I am an adult, have personal knowledge of the facts stated below, and am competent to testify.

2. I am the Natural Resources Manager for the Utah State Tax Commission (the Commission”), Property Tax Division.

3. Pursuant to Utah Code § 59-2-201(1)(e), the Commission assesses all mines and mining claims at 100 per cent of fair market value.

4. The Commission ordinarily relies upon the counties’ mapping of property and placement in proper taxing districts.

5. I recently examined the location of the Yellow Jack and the Peay’s Dream Mine claims.

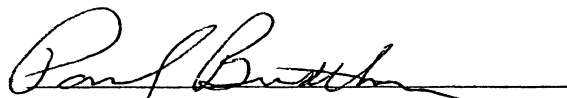
6. Part of each of the above mining claims is in Utah County, and part of each of the above mining claims is in Provo City.

7. Those claims are split between taxing district 110 (Provo City) and taxing district 35 (Utah County), and that split will be reflected on the 2006 tax notices, and will be valued accordingly.

8. It appears that in the past the mining claims were incorrectly treated for valuation and taxation purposes as though they were wholly within taxing district 35 (Utah County).

9. Exempt property, as defined in Utah Code Ann. § 59-2-1101, such as that owned by the federal government, is not valued or assessed by the Commission nor taxed, except as allowed under Utah Code Ann. § 59-4-101 et seq.

DATED this 10 day of February, 2006.

A handwritten signature in black ink, appearing to read "Paul Bredthauer", written over a horizontal line.

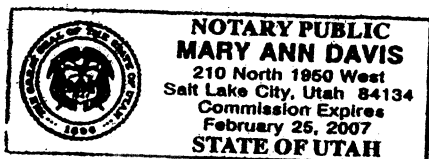
PAUL BREDTHAUER

STATE OF UTAH)

SS.

COUNTY OF)

On this 10th day of February, 2006, Paul Bredthauer, who is known to me, or who has proven his identity by presenting government-issued picture identification, personally appeared before me and signed this affidavit upon his oath.



Mary Ann Davis

Notary Public

Residing at Salt Lake City Utah My Commission Expires: February 25, 2007

ADDENDUM "C"

FILED
Fourth Judicial District Court
of Utah County, State of Utah
6-28-06 Deputy

**IN THE FOURTH JUDICIAL DISTRICT COURT,
UTAH COUNTY, STATE OF UTAH**

Richard Davis,

Plaintiff,

vs.

Greg Sperry, et al,

Defendants.

MEMORANDUM DECISION

Date: June 28, 2006

Case No.: 000403760

Division VII: Judge James R. Taylor

This matter comes before the Court on a Motion to Dismiss by Provo City. Oral arguments were held on April 13, 2006 and this matter has been subsequently briefed. For the reasons stated below, Provo City's motion is granted.

Factual Background

When reviewing a motion to dismiss, the Court accepts the factual allegations in the complaint as true and "interprets those facts and all reasonable inferences drawn therefrom in a light most favorable to the plaintiff as the nonmoving party." Russell Packard Dev. v. Carson, 108 P.3d 741, 743 (Utah 2005). The facts are recited accordingly. In 1978, Provo City annexed a large tract of land known as the Heritage Mountain Annexation. In 1998, Plaintiff Richard Davis and Defendant Greg Sperry recorded interests in property that lies within the Heritage Mountain Annexation. According to an affidavit by Davis, Provo City has never levied any

property taxes on the property while he has had an interest. In his amended complaint filed on November 23, 2005, Davis asserts that Provo City's annexation of his property was done illegally, making the annexation void. Provo City's seeks to dismiss the Seventh Cause of Action in Davis' amended complaint, the only cause of action against them in this case.

Motion to Dismiss

Provo asserts three different grounds for dismissal: statute of limitations, laches, and the Governmental Immunity Act of Utah. Davis has filed a U.R.C.P. 56(f) request for extension of time for discovery for this motion. Beginning with the statute of limitations, Provo asserts that Davis' claim is barred by a statute of limitations under U.C.A. § 78-12-25(3). In response, Davis argues that another statute, U.C.A. § 10-2-422, trumps the four-year limitation, allowing him to still seek relief against Provo.

Under U.C.A § 78-12-1, civil actions "may be commenced only within the periods prescribed in this chapter . . . except in specific cases where a different limitation is prescribed by statute." Further, U.C.A. § 78-12-25(3) provides that "an action may be brought within four ~~years for relief not~~ otherwise provided for by law." These sections require that the four-year limitation "be applied to claims for which the legislature has not enacted a more specific statute restricting the time in which a particular claim may be brought." Quick Safe-T Hitch, Inc. v. RSB Sys., 12 P.3d 577, 579 (Utah 2000).

Provo asserts that the four-year limit applies because a "different limitation" does not exist. Davis claims that UCA § 10-2-422 is a "different limitation" under U.C.A. § 78-12-1,

which would take their cause of action out of the four-year limitation. UCA § 10-2-422, which was substantively the same statute at the time of annexation, provides:

An area annexed to a municipality under this part [U.C.A. §§ 10-2-401 to 10-2-428] shall be conclusively presumed to have been validly annexed if:

- (1) the municipality has levied and the taxpayers within the area have paid property taxes for more than one year after annexation; and
- (2) no resident of the area has contested the annexation in a court of proper jurisdiction during the year following annexation.

Because Provo City has never levied taxes on Davis while he has owned the property, the property cannot be “conclusively presumed to have been validly annexed.” Davis asserts that U.C.A. § 10-2-422 is a statute of limitations that has not yet run against him, allowing him to bring suit against the annexation that took place in 1978.

The general goals of statutes of limitations are “to prevent unfair dilatory litigation against a defendant and to require that claims be litigated while proper investigation and preservation of evidence can occur.” Vigos v. Mountainland Builders, Inc., 993 P.2d 207, 213 (Utah 2000). U.C.A. § 10-2-422 accomplishes neither of these, instead it is a conclusive ~~limitation that can defeat a challenge to an annexation, but it does not prevent a challenge, which~~ is the function of a statute of limitations. Adopting Davis’ interpretation that U.C.A. § 10-2-422 is the proper statute of limitations in this matter, would allow annexations to be challenged in perpetuity as long as property taxes were not levied against a piece of property by Provo City. This Court finds that this matter falls within the catchall four-year limitation in U.C.A. § 78-12-25(3), barring Davis’ challenge to the 1978 annexation. Davis has not asserted that the four years should be tolled in any manner. Therefore, Provo City’s motion to dismiss the Seventh Cause of

Action in Davis' Amended Complaint is granted. Because Davis is barred by the statute of limitations, the Court will not address Provo's alternative arguments regarding laches and the Utah Governmental Immunity Act. Further, Davis' Rule 56(f) motion is denied because it requests discovery to determine whether U.C.A. § 10-2-422 is applicable, which this decision moots. The Court orders Provo City to prepare an order for the Court's signature consistent with this decision.

Dated this 28 day of Dec, 2006.


Judge James
Fourth Judicial District Court

A certificate of mailing is on the following page.

Davis v. Sperry et al., Memorandum Decision

Copies of this Decision mailed to:

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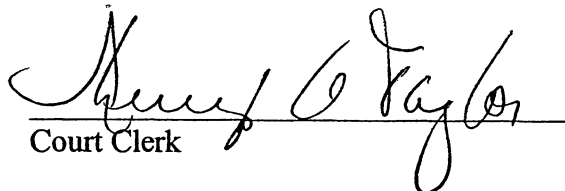
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Mailed this 28 day of June, 2006, postage pre-paid as noted above.


Court Clerk